

House Bill 219 (AS PASSED HOUSE AND SENATE)

By: Representatives Royal of the 171st, O'Neal of the 146th, Roberts of the 154th, and Black of the 174th

A BILL TO BE ENTITLED
AN ACT

To amend Titles 10, 12, 48, and 52 of the Official Code of Georgia Annotated, relating, respectively to commerce and trade, conservation and national resources, revenue and taxation, and waters of the state, so as to provide for prepayments of certain local sales and use taxes with respect to motor fuels; to provide for procedures, conditions, and limitations; to change certain provisions regarding penalties; to change certain provisions regarding taxation of motor fuel; to change certain provisions regarding sales and use tax exemptions regarding motor fuel; to change certain provisions regarding refunds of motor fuel taxes; to change certain requirements regarding reports of motor fuel deliveries; to change certain provisions regarding the George L. Smith II Georgia World Congress Center Authority, the Jekyll Island-State Park Authority, and the Georgia Ports Authority so as to provide for a sales and use tax exemption with respect to certain property purchased by such authorities; to provide for effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended in Code Section 48-8-2, relating to definitions, by revising paragraph (5.1) and adding a new paragraph as follows:

"(5.1) 'Prepaid state tax' means the tax levied under Code Section 48-8-30 in conjunction with Code Section 48-8-3.1 and Code Section 48-9-14 on the retail sale of motor fuels for highway use and collected prior to that retail sale. This tax is based upon the average retail sales price as set forth in Code Section 48-9-14. ~~This shall not apply to any local sales and use tax which is levied on the sale or use of motor fuel and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment, by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, known as the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965', by or pursuant~~

~~to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; or by or pursuant to Article 3 of this chapter.~~

(5.2) 'Prepaid local tax' means any local sales and use tax which is levied on the sale or use of motor fuel and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, known as the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965' or by or pursuant to Article 2, 2A, 3, or 4 of this chapter. Such tax is based on the same average retail sales price as set forth in subparagraph (b)(2)(B) of Code Section 48-9-14. Such price shall be used to compute the prepaid sales tax rate for local jurisdictions by multiplying such retail price by the applicable rate imposed by the jurisdiction. The person collecting and reporting the prepaid local tax for the local jurisdiction shall provide a schedule as to which jurisdiction these collections relate. This determination shall be based upon the shipping papers of the conveyance that delivered the motor fuel to the dealer or consumer in the local jurisdiction. A seller may rely upon the representation made by the purchaser as to which jurisdiction the shipment is bound and prepare shipping papers in accordance with those instructions."

SECTION 2.

Said title is further amended in Code Section 48-8-30, relating to imposition of sales and use taxes, by adding new subsections (j) and (k) to read as follows:

"(j) In the event any distributor licensed under Chapter 9 of this title purchases any motor fuel on which the prepaid state tax or prepaid local tax or both have been imposed pursuant to this Code section and resells the same to a governmental entity that is totally or partially exempt from such tax under paragraph (1) of Code Section 48-8-3, such distributor shall be entitled to either a credit or refund. The amount of the credit or refund shall be the prepaid state tax or prepaid local tax or both rates for which such governmental entity is exempt multiplied by the gallons of motor fuel purchased for its exclusive use. To be eligible for the credit or refund, the distributor shall reduce the amount such distributor charges for the fuel sold to such governmental entity by an amount equal to the tax from which such governmental entity is exempt. Should a distributor have a liability under this Code section, the distributor may elect to take a credit for those sales against such liability.

(k) The prepaid local tax shall be imposed at the time tax is imposed under subparagraph (b)(2)(B) of Code Section 48-9-14."

SECTION 3.

Said title is further amended by revising subsection (f) of Code Section 48-8-50, relating to compensation of dealers, as follows:

"(f) The deduction authorized under this Code section shall be combined with and calculated with the deductions authorized under Code Section 48-8-87, Code Section 48-8-104, Code Section 48-8-113, Code Section 48-8-204, Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965,' and any other sales tax, use tax, or sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, by applying the deduction rate specified in this Code section against the combined total of all such taxes reported due on the same return."

SECTION 4.

Said title is further amended by revising Code Section 48-8-82, relating to imposition of the joint county and municipal sales and use tax, as follows:

"48-8-82.

When the imposition of a joint county and municipal sales and use tax is authorized according to the procedures provided in this article within a special district, the county whose geographical boundary is conterminous with that of the special district and each qualified municipality located wholly or partially within the special district shall levy a joint sales and use tax at the rate of 1 percent. Except as to rate, the joint tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the tax levied pursuant to this article, except that the joint tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined by ~~Code Section 48-9-2~~ paragraph (5.2) of Code Section 48-8-2 and shall be applicable to the sale of food and beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3."

SECTION 5.

Said title is further amended by revising Code Section 48-8-87, relating to the administration and collection of the joint county and municipal sales and use tax, as follows:

"48-8-87.

The tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district and of each qualified municipality located wholly or partially therein. Such administration and collection shall be accomplished in the

1 same manner and subject to the same applicable provisions, procedures, and penalties
2 provided in Article 1 of this chapter. except that the joint tax provided in this article shall
3 be applicable to sales of motor fuels as prepaid local tax as that term is defined by
4 paragraph (5.2) of Code Section 48-8-2; provided, however, that all moneys collected from
5 each taxpayer by the commissioner shall be applied first to such taxpayer's liability for
6 taxes owed the state. Dealers shall be allowed a percentage of the amount of the tax due
7 and accounted for and shall be reimbursed in the form of a deduction in submitting,
8 reporting, and paying the amount due if such amount is not delinquent at the time of
9 payment. The deduction shall be at the rate and subject to the requirements specified under
10 subsections (b) through (f) of Code Section 48-8-50."

11 SECTION 6.

12 Said title is further amended by revising subsection (b) of Code Section 48-8-102, relating
13 to the imposition of the homestead option sales and use tax, as follows:

14 "(b) When the imposition of a local sales and use tax is authorized according to the
15 procedures provided in this article within a special district, the county whose geographical
16 boundary is conterminous with that of the special district shall levy a local sales and use
17 tax at the rate of 1 percent. Except as to rate, the local sales and use tax shall correspond
18 to the tax imposed and administered by Article 1 of this chapter. No item or transaction
19 which is not subject to taxation by Article 1 of this chapter shall be subject to the sales and
20 use tax levied pursuant to this article, except that the sales and use tax provided in this
21 article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined
22 by ~~Code Section 48-9-2~~ paragraph (5.2) of Code Section 48-8-2 and shall be applicable to
23 the sale of food and beverages only to the extent provided for in paragraph (57) of Code
24 Section 48-8-3."

25 SECTION 7.

26 Said title is further amended by revising subsection (a) of Code Section 48-8-104, relating
27 to the administration and manner of distribution of the homestead option sales and use tax,
28 as follows:

29 "(a) The sales and use tax levied pursuant to this article shall be exclusively administered
30 and collected by the commissioner for the use and benefit of each county whose
31 geographical boundary is conterminous with that of a special district. Such administration
32 and collection shall be accomplished in the same manner and subject to the same applicable
33 provisions, procedures, and penalties provided in Article 1 of this chapter except that the
34 sales and use tax provided in this article shall be applicable to sales of motor fuels as
35 prepaid local tax as that term is defined by paragraph (5.2) of Code Section 48-8-2;

provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the sales and use tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50."

SECTION 8.

Said title is further amended by revising subsection (c) of Code Section 48-8-110.1, relating to imposition of the county special purpose local option sales and use tax, as follows:

"(c) Any tax imposed under this part shall be at the rate of 1 percent. Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part, except that a tax imposed under this part shall apply to sales of motor fuels as prepaid local tax as that term is defined by ~~Code Section 48-9-2~~ paragraph (5.2) of Code Section 48-8-2 and shall be applicable to the sale of food and beverages as provided for in division (57)(D)(i) of Code Section 48-8-3."

SECTION 9.

Said title is further amended by revising Code Section 48-8-113, relating to the administration of the county special purpose local option sales and use tax, as follows:

"48-8-113.

A tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of the county and qualified municipalities within such special district imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined by paragraph (5.2) of Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or in behalf of the county and qualified municipalities within the special district or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction

1 in submitting, reporting, and paying the amount due if such amount is not delinquent at the
2 time of payment. The deduction shall be at the rate and subject to the requirements
3 specified under subsections (b) through (f) of Code Section 48-8-50."

4 **SECTION 10.**

5 Said title is further amended by revising subparagraph (c)(1)(A) of Code Section 48-8-201,
6 relating to imposition of the municipal water and sewer projects and costs tax, as follows:

7 "(A) Sales of motor fuels as prepaid local tax as that term is defined by ~~Code Section~~
8 ~~48-9-2~~ paragraph (5.2) of Code Section 48-8-2;"

9 **SECTION 11.**

10 Said title is further amended by revising Code Section 48-8-204, relating to administration
11 and collection of the municipal water and sewer projects and costs tax, as follows:

12 "48-8-204.

13 A tax levied pursuant to this article shall be exclusively administered and collected by the
14 commissioner for the use and benefit of the municipality imposing the tax. Such
15 administration and collection shall be accomplished in the same manner and subject to the
16 same applicable provisions, procedures, and penalties provided in Article 1 of this chapter
17 except that the sales and use tax provided in this article shall be applicable to sales of motor
18 fuels as prepaid local tax as that term is defined by paragraph (5.2) of Code Section 48-8-2;
19 provided, however, that all moneys collected from each taxpayer by the commissioner shall
20 be applied first to such taxpayer's liability for taxes owed the state; and provided, further,
21 that the commissioner may rely upon a representation by or in behalf of the municipality
22 or the Secretary of State that such a tax has been validly imposed, and the commissioner
23 and the commissioner's agents shall not be liable to any person for collecting any such tax
24 which was not validly imposed. Dealers shall be allowed a percentage of the amount of the
25 tax due and accounted for and shall be reimbursed in the form of a deduction in submitting,
26 reporting, and paying the amount due if such amount is not delinquent at the time of
27 payment. The deduction shall be at the rate and subject to the requirements specified under
28 subsections (b) through (f) of Code Section 48-8-50."

29 **SECTION 12.**

30 Said title is further amended by revising subsections (d), (e), and (f) of Code Section 48-9-9,
31 relating to reports of motor fuel deliveries, as follows:

32 "(d)(1) Every person transporting motor fuel over the public highways or navigable
33 waters of this state shall have in such person's possession an invoice, bill of sale, or
34 other document which identifies:

- 1 (A) The true name and address of the person from whom the motor fuel was received;
2 (B) The number of gallons originally received;
3 (C) The true name and address of every person who has received any part of the fuel;
4 (D) The number of gallons delivered to such persons; and
5 (E) The city or county and state of destination as represented to the transporter by the
6 person who arranged the transportation.

7 (2) Failure to produce such invoice, bill of sale, or other document when demanded or
8 failure of a document produced upon demand to meet the requirements of this Code
9 section shall be prima-facie evidence of a violation of this article.

10 (3) The transporter shall leave a copy of the invoice, bill of lading, or other
11 documentation with each person who receives the fuel into bulk storage for resale.

12 (e) Delivery of motor fuel from a transport tank truck or vessel directly into the fuel tank
13 of any motor vehicle in this state is prohibited except in cases of emergency.

14 (f) Every person purchasing or otherwise acquiring motor fuel in bulk quantities for sale,
15 use, or other disposition in this state who is not required to be licensed as a distributor by
16 this article may be required to file by the twentieth day of each calendar month a report on
17 forms prescribed by the commissioner to account for all such motor fuel acquired during
18 the preceding calendar month. Every operator of a terminal who receives motor fuel in bulk
19 for storage shall include on a report to the commissioner the names of all persons who are
20 storing fuel in the terminal and the quantity received, stored, and delivered during the
21 month on behalf of each such account. The report shall specify what portion of the
22 deliveries recorded for each account were within the terminal to others and what portion
23 was removed from the terminal facility via the loading rack. The report shall identify the
24 city or county and state ~~or country~~ of destination of the deliveries as reflected on the bills
25 of lading issued by the terminal operator."

26 SECTION 13.

27 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is
28 amended by revising Code Section 10-9-10, relating to the exemption from taxation of the
29 George L. Smith II Georgia World Congress Center Authority, as follows:

30 "10-9-10.

31 It is found, determined, and declared that the creation of the authority and the carrying out
32 of its corporate purposes are in all respects for the benefit of the people of this state and are
33 public purposes and that the authority will be performing an essential governmental
34 function in the exercise of the powers conferred upon it by this chapter. The authority shall
35 be required to pay no taxes or assessments upon any property acquired or under its
36 jurisdiction, control, possession, or supervision or upon its activities in the development,

1 construction, operation, or maintenance of any of the projects or facilities erected,
2 maintained, or acquired by it or any fees, rentals, or other charges for the use of such
3 facilities or other income received by the authority and shall not be subject to regulation
4 of its activities in the acquisition, development, construction, operation, or maintenance of
5 any of the projects or facilities acquired, developed, constructed, operated, or maintained
6 by it by any county or municipal corporation of this state. The exemption from taxation
7 provided for in this Code section shall include an exemption from sales and use tax on
8 tangible personal property purchased by the authority for use exclusively by the authority.
9 The revenue bonds or other evidence of indebtedness issued by the authority, their transfer,
10 and the income therefrom shall at all times be exempt from taxation within this state by the
11 state or its municipalities or political subdivisions."

12 SECTION 14.

13 Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural
14 resources, is amended by revising Code Section 12-3-274, relating to the exemption from
15 taxation of the Jekyll Island-State Park Authority, as follows:

16 "12-3-274.

17 It is found, determined, and declared that the creation of the authority and the carrying out
18 of its corporate purpose are in all respects for the benefit of the people of this state and
19 constitute a public purpose and that the authority will be performing an essential
20 governmental function in the exercise of the power conferred upon it by this part. This state
21 covenants with the holders of the bonds that the authority shall be required to pay no taxes
22 or assessments upon any of the property acquired or leased by it, or under its jurisdiction,
23 control, possession, or supervision, or upon its activities in the operation or maintenance
24 of the buildings erected or acquired by it, or upon any fees, rentals, or other charges
25 received by the authority for the use of such buildings, or upon other income received by
26 the authority. The exemption from taxation provided for in this Code section shall include
27 an exemption from sales and use tax on tangible personal property purchased by the
28 authority for use exclusively by the authority. Further, this state covenants that the bonds
29 of the authority, their transfer, and the income therefrom shall at all times be exempt from
30 taxation within the state."

31 SECTION 15.

32 Title 52 of the Official Code of Georgia Annotated, relating to waters of the state, is amended
33 by revising Code Section 52-2-37, relating to exemption from taxation of the Georgia Ports
34 Authority; as follows:

1 "52-2-37.

2 It is found, determined, and declared that the creation of the authority and the carrying out
3 of its corporate purpose is in all respects for the benefit of the people of this state and is a
4 public purpose and that the authority will be performing an essential governmental function
5 in the exercise of the power conferred upon it by this chapter; and this state covenants with
6 the holders of the bonds that the authority shall be required to pay no taxes or assessments
7 upon any of the property acquired by it or under its jurisdiction, control, possession, or
8 supervision or upon its activities in the operation or maintenance of the facilities erected,
9 maintained, or acquired by it or any fees, rentals, or other charges for the use of such
10 facilities or other income received by the authority and that the bonds of the authority, their
11 transfer, and the income therefrom shall at all times be exempt from taxation within the
12 state. The exemption from taxation provided for in this Code section shall include an
13 exemption from sales and use tax on tangible personal property purchased by the authority
14 for use exclusively by the authority."

15 **SECTION 16.**

16 Sections 13, 14, 15, this section, and Section 17 of this Act shall become effective on July
17 1, 2007. The remaining provisions of this Act shall become effective on January 1, 2008.

18 **SECTION 17.**

19 All laws and parts of laws in conflict with this Act are repealed.